

# Instructions For Form 38

## North Dakota Fiduciary Income Tax Return

### General Instructions

#### Who Must File

A fiduciary for a resident estate or trust, or a fiduciary for a nonresident estate or trust which derives income from North Dakota sources, must file Form 38, North Dakota Fiduciary Income Tax Return, if required to file Federal Form 1041. Either Schedule 1 (Short Method) or Schedule 2 (Long Method) may be used to calculate the tax. It is advised that the tax be calculated under both methods to see which one yields the lowest tax.

Form 38 must be signed by the fiduciary or an authorized representative of the fiduciary. If someone other than the fiduciary is paid to prepare the return, the paid preparer must also sign the return.

#### Resident Estate Or Trust

A fiduciary for a resident estate or trust is generally subject to the same law provisions as a resident individual. The entire income of a resident estate or trust must be reported to North Dakota.

#### Nonresident Estate Or Trust

A fiduciary for a nonresident estate or trust is generally subject to the same law provisions as a nonresident individual. Only the portion of the income of a nonresident estate or trust that is derived from North Dakota sources must be reported to North Dakota. Income from North Dakota sources includes income and gains from tangible property located in North Dakota and income from a business carried on in North Dakota. If a business is carried on within and without North Dakota, the income must be apportioned and allocated according to the provisions of North Dakota Century Code ch. 57-38.1, and a statement showing the calculations must be attached to Form 38. Except where the property is an integral part of a business carried on in North Dakota, income from North Dakota sources does not include income and gains from stocks, bonds, or other intangible personal property.

#### When And Where To File And Pay

A return filed for the calendar year 1997 must be filed on or before April 15, 1998. A return filed on a fiscal year basis must be filed on or before the fifteenth day of the fourth month following the end of the fiscal year. If an extension of time to file is needed, an extension of time to file the federal fiduciary return is accepted for North Dakota purposes. If no federal extension is obtained, a state extension may be obtained by filing

Form F-101 prior to the due date of the return. If a federal or state extension is obtained, attach a copy of the applicable extension form to Form 38 and check the "Extension attached" block on page 1 of Form 38.

The return must be filed with the Office of State Tax Commissioner, State Capitol, 600 E. Boulevard Ave., Bismarck, North Dakota 58505-0599. A balance due must be paid in full with the return when the return is filed. Make the check or money order payable to "State Tax Commissioner."

#### Penalty And Interest

Penalty and interest charges apply to late payments of tax. The penalty is equal to 5% of the tax or \$5.00, whichever is larger. Interest is charged at the rate of 1% per month (or a fraction of a month), except for the month in which the due date (or extended due date) of the return falls. If an extension of time to file is obtained, the extension operates to extend the time to pay a balance due on the return; however, interest is charged on the balance due at the rate of 12% per year. The Office of State Tax Commissioner will notify the taxpayer of any penalty and interest due. If desired, a taxpayer may calculate penalty and interest charges and include them in the payment submitted with the return.

#### Estimated Income Tax

A fiduciary for an estate or trust must make estimated income tax payments for 1998 (using Form 401-ES) if all four of the following conditions apply: 1. The fiduciary is required to pay estimated federal income tax for 1998; 2. The fiduciary's net tax liability for 1997 was \$200 or greater (*Note: If no return was required for 1997, the net tax liability is zero for this purpose, and no estimates are required*); 3. The fiduciary expects to owe, after subtracting North Dakota income tax withholding, at least \$200 in tax for 1998; and, 4. The fiduciary expects North Dakota income tax withholding for 1998 to be less than the smaller of: (a) 90% of the net tax liability shown on the 1998 North Dakota tax return or (b) 100% of the net tax liability shown on the 1997 North Dakota tax return. (*Note: If the estate or trust was not in existence for all of 1997, part (b) of condition 4 does not apply*).

#### Beneficiaries (Schedule 3)

Schedule 3 (on page 2, Form 38) must be completed to show the portion of the North Dakota income or loss distributed to each beneficiary. This schedule must be

completed in all cases, regardless of whether Schedule 1 or Schedule 2 is used to calculate the tax. If interest from U.S. obligations or other securities exempt from state income tax (including dividends from a mutual fund attributable to investments by the mutual fund in the same kinds of securities) is included in a beneficiary's share of income reported on Schedule 3, a schedule specifically identifying the securities or the mutual fund, or both, must be attached to Form 38. A year-end statement from a mutual fund or a broker will satisfy this identification requirement if it contains the requisite information.

#### Information At The Source Returns

Every fiduciary for an estate or trust who is required to file a Federal Form 1099 or W-2 generally must also file one with the Office of State Tax Commissioner. For details, obtain the *Income Tax Guideline: Information At The Source Return Requirements And Procedures* and the *Income Tax Guideline: Income Tax Withholding*.

#### Amended Returns

Check the "Amended return" block on Form 38 if it is being filed to correct a previously filed return. If an amended Federal Form 1041 is filed, or if the Internal Revenue Service makes changes to Federal Form 1041, an amended Form 38 must be filed within ninety days after filing the amended federal return or within ninety days after the final determination of the IRS changes.

#### Where To Get Forms And Assistance

For forms or assistance, call (701)328-3450. The speech or hearing impaired may call the TDD/TTY numbers 1-800-453-8950 (toll free within North Dakota) or (701)328-2778. Or write to: Office of State Tax Commissioner, State Capitol, 600 E. Boulevard Avenue, Bismarck, ND 58505-0599.

**Federal Privacy Act Information.** In compliance with the Federal Privacy Act of 1974 (Public Law 93-579), the disclosure of the federal employer identification number of the estate or trust on this form is mandatory and is required under subsections 1 and 7 of North Dakota Century Code § 57-38-31. A federal employer identification number is used as an identification number by the Office of State Tax Commissioner for file control purposes, recordkeeping, and for cross-checking a taxpayer's files with the Internal Revenue Service.

### Specific Instructions For Completing Lines 10 Through 20, Page 1

#### Complete either Schedule 1 or Schedule 2 before completing lines 10 through 20 on page 1 of Form 38.

**Line 11. (Resident estate or trust only)** If income tax is paid to another state, the District of Columbia, or a territory of the United States, a limited credit is allowed. Complete Schedule 4 on page 2 of Form 38 to determine the allowable credit. **Attach a copy of the other state's income tax return.**

**Line 13. (Schedule 2 filer only)** Enter the amount of the credit allowed for investment in a venture capital corporation under N.D.C.C. ch. 10-30.1. For details, see the investment reporting form provided by the corporation. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**

**Line 14. (Schedule 2 filer only)** Enter the amount of the credit allowed for investment in the North Dakota Small Business Investment Company (SBIC) under N.D.C.C. ch. 10-30.2. For details, see the investment reporting form provided by the SBIC. **Attach a copy of the North Dakota SBIC Investment Reporting Form.**

**Line 15. (Schedule 2 filer only)** Enter the amount of the credit allowed for investment in a nonprofit development corporation under N.D.C.C. § 10-33-124. For details, see the investment reporting form provided by the corporation. **Attach a copy of the Nonprofit Development Corporation Investment Reporting Form.**

**Line 16. (Schedule 2 filer only)** Enter the amount of the credit allowed for investment in a business certified by the Director of Economic Development and Finance as a qualifying business for the seed capital investment credit under N.D.C.C. ch. 57-38.5. For details, see the investment reporting form provided by the business. **Attach a copy of the Seed Capital Investment Reporting Form.**

- Every fiduciary may choose to use either Schedule 1 (Short Method) or Schedule 2 (Long Method). In most cases, the tax will be lower using Schedule 1; however, it is advised that the tax be calculated using both methods to determine which one results in the lowest tax.
- First complete either Schedule 1 or Schedule 2, then complete lines 10 through 20 on page 1 of Form 38.

### Specific Line Instructions For Schedule 1 (Short Method)

**Line 1.** Enter the federal income tax liability from Federal Form 1041, Schedule G, line 1c less line 2d plus (line 6 less the amount of investment credit included on Federal Form 1041, Schedule G, line 2c; however, line 6 may not be reduced below zero).

**Recomputation of federal income tax liability for certain nonresident estates or trusts.** If a nonresident estate or trust has non-North Dakota losses that exceed its non-North Dakota income, the federal income tax liability may have to be recomputed before entering it on this line. For details, obtain Schedule 7 from the Office of State Tax Commissioner.

**Line 3. (Resident estate or trust only)** Enter interest income from U.S. obligations and other securities exempt

from state income tax under federal law. Also enter dividend income from a regulated investment company (mutual fund) to the extent attributable to the mutual fund's investment in the same kinds of securities. Unless already identified on the federal income tax return, attach a schedule specifically identifying the securities or the mutual fund, or both. A year-end statement from a mutual fund or broker will satisfy this identification requirement if it contains the requisite information.

**Line 4. (Nonresident estate or trust only)** Enter the portion of the fiduciary's income on line 2 that is not reportable to North Dakota. See Nonresident Estate Or Trust in the General Instructions for information on what income is not reportable to North Dakota.

**Line 5.** Enter the following items only:

- Income earned by an American Indian while living and working on an Indian reservation.
- Payments from the U.S. Railroad Retirement Board to the extent subject to federal income tax.
- Amount of income or loss from a Subchapter S corporation subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From S Corporation Subject to N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement from the corporation to substantiate the adjustment.**

### Specific Line Instructions For Schedule 2 (Long Method)

**Line 4.** Enter the following on this line:

- Except for North Dakota and its political subdivisions, interest from state and local government obligations that is exempt from federal income tax. Include the portion of dividends received from a regulated investment company (mutual fund) that is attributable to the mutual fund's investment in the obligations of other states and their political subdivisions.
- State and local income taxes deducted in determining federal taxable income.
- Lump-sum distribution from a qualified retirement plan for which an election was made to report the distribution on Federal Form 4972.
- Amount of loss from a Subchapter S corporation subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From S Corporation Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement from the corporation to substantiate the adjustment.**

**Line 6.** Enter the following on this line:

- Interest income, up to a maximum of \$300, received from a North Dakota financial institution.
- Interest income from U.S. obligations and other securities exempt from state income tax under federal law. Also enter dividend income from a regulated investment company (mutual fund) to the extent attributable to the mutual fund's investment in the same kinds of securities. Unless already identified on the federal income tax return, attach a schedule specifically identifying the securities or the mutual fund, or both. A year-end statement from a mutual fund or broker will satisfy this identification requirement if it contains the requisite information.
- Allowable deductions for the sale or lease of land to a qualifying beginning farmer or for the sale or lease of a revenue-producing enterprise to a qualifying beginning businessman. To determine eligibility for these deductions, obtain the *Income Tax Guideline: Beginning Farmer Income Tax Deductions* and the

*Income Tax Guideline: Beginning Businessman Income Tax Deductions*. **Attach a copy of the Beginning Farmer Statement or Beginning Businessman Statement to substantiate the deduction(s).**

- Dividends, up to a maximum of \$15,000, from a corporation which has paid North Dakota income tax under N.D.C.C. ch. 57-38 or North Dakota financial institution tax under N.D.C.C. ch. 57-35.3. If the corporation does not conduct 100% of its business in North Dakota, the amount otherwise allowed must be multiplied by the corporation's percentage of business conducted in North Dakota to determine the amount to enter on this line. The percentage of business conducted in North Dakota is equal to the corporation's apportionment factor reported on the corporation's North Dakota tax return. Contact the corporation to obtain this information.
- Amount of investment, up to a maximum of \$5,000, in a venture capital corporation under N.D.C.C. ch. 10-30.1. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**
- Income earned by an American Indian while living and working on an Indian reservation.
- Taxable portion of payments from the U.S. Railroad Retirement Board.
- Gain from sale of property due to the exercise of eminent domain.
- Income exempt from income tax under N.D.C.C. ch. 40-57.1.
- Amount of income from a Subchapter S corporation subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From S Corporation Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement from the corporation to substantiate the adjustment.**

**Line 10.** Enter the amount from line 6; however, do not include any amount deducted for an investment in a venture capital corporation.

**Line 14. (Nonresident estate or trust only)** A nonresident estate or trust must prepare a separate schedule on which it calculates the North Dakota income or loss to enter on this line. The North Dakota income or loss of a nonresident estate or trust is generally calculated in the same manner as for a resident estate or trust, except that only the income, deductions, and other adjustments attributable to North Dakota are taken into account. Itemized deductions, such as interest, taxes, and fiduciary fees, etc., are to be attributed to North Dakota based upon the ratio of North Dakota income to total federal income. For purposes of calculating the federal income tax deduction, multiply the total federal income tax (from Federal Form 1041, Schedule G, line 4 plus line 5) by the ratio of North Dakota income to total federal income. **Attach a copy of the schedule showing how the North Dakota income (loss) was calculated.**

**Line 15.** Enter the portion of the North Dakota income (loss) on line 14 distributed to the beneficiaries of the estate or trust. In determining this amount, any addback or subtract adjustment taken into account in calculating North Dakota income (loss) must be included if it relates to income distributed to the beneficiaries.

**Line 18.** If a contribution is made to a nonprofit private high school in North Dakota, a credit is allowed equal to the lesser of (1) 50% of the contribution, (2) 40% of the tax on Form 38, Schedule 2, line 17, or (3) \$250. If a contribution is made to a nonprofit private college in North Dakota, a credit is allowed equal to the lesser of (1) 50% of the contribution, (2) 40% of the tax on Form 38, Schedule 2, line 17, or (3) \$250. Contributions made up to the due date (including extensions) for filing Form 38 are eligible. **Attach a copy of a receipt or canceled check (front and back) to substantiate the contribution.**

Credits are allowed for installing a geothermal, solar or wind energy device on North Dakota property and for payment of wages to a developmentally disabled or chronically mentally ill person employed in North Dakota. For more information, contact the Office of State Tax Commissioner.